

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 050239P
Sales and Use Tax
For the Years 2002-2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration- Ten Per Cent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer operates video games, pinball machines, pool tables and dart machines in more than 250 locations. They also recondition, sell and service older machines for home entertainment. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested the imposition of the ten percent (10%) negligence penalty. The taxpayer requested that the Letter of Findings be based on the information in the file.

I. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts

and circumstances of each taxpayer.

The taxpayer computed its monthly sales tax liability by taking its gross sales, backing the tax out and reporting net sales on the ST-103. The law and all published departmental instructions indicate that the merchant is to compute the sales tax due by multiplying the gross retail income by the percentage of sales tax due. The retail merchant is not allowed to absorb the customer's sales tax on a sale. Further, in clear contradiction of the law and published departmental instructions, the taxpayer failed to collect sales tax on parts sold during service calls. The taxpayer's failure to read and follow the published departmental instructions constitutes negligence.

FINDING

The taxpayer's protest is denied.

KMA/JMM/JMS/05/18/08